

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

_____)	
Investigation re Competitive Market)	
Initiatives)	D.T.E. 01-54
_____)	

**COMMENTS OF MASSACHUSETTS ELECTRIC COMPANY
AND NANTUCKET ELECTRIC COMPANY**

These comments by Massachusetts Electric Company and Nantucket Electric Company (collectively “Company” or “Mass. Electric”) address the issues raised at the Department’s technical session in the above-captioned proceeding.

**DISTRIBUTION OF INFORMATION KNOWN BY DISTRIBUTION COMPANIES TO
COMPETITIVE MARKETERS**

At the technical session, the parties discussed a number of issues relating to the distribution of information known by the utility to competitive marketers. At present, utilities are providing names, addresses, and rate classes of customers on default service to requesting, licensed suppliers and brokers who sign an agreement to limit the use of this information to marketing energy and energy related services, as set forth in the Department’s order in this docket.

Ability of customers to “opt-in” or “opt-out” of information sharing and supplier marketing

At the technical session, there was much discussion about expanding the type of information that distribution companies would share with suppliers. In short, we discussed four different categories of information: (1) names, addresses, and rate classes; (2) billing data, ie monthly usage and demand;

(3) load interval data; and (4) credit information. While this section addresses the most appropriate means for customers to authorize the release of information about themselves, Mass. Electric notes that the question of what information should be released must also be thoroughly addressed in the overall context of the Electric Industry Restructuring Act of 1997 (“Restructuring Act”) and the Massachusetts restructuring climate. While the practices of other states is informative, it is important not to adopt them without a thorough understanding of how those practices fit into the overall scheme of that state.

As the Department stated in its order in this docket, the first category of information, names, addresses, and rate classes, is non-proprietary.¹ In addition, Mass. Electric considers billing cycle information non-proprietary. For non-proprietary information, it is appropriate for the utility to notify customers that the utility may give this information to suppliers unless a customer notifies the utility not to release this information, that is to say, unless the customer “opts out” of the release of information. Mass. Electric recommends the occasional use of bill inserts or bill messages to communicate this information to customers, perhaps a standard one sent annually to all Massachusetts customers. Mass. Electric has already successfully used bill inserts to notify customers of the opportunity to opt out of marketing efforts such as this. We received a few requests by customers to opt out, and have already set in place the process for excluding these and any other customers subsequently requesting removal from the lists provided to qualifying suppliers.

The other categories of information are proprietary, however. Our focus groups with

¹Mass. Electric suggests that the disclosure of the identity of customers on the low-income rate may be an exception to this rule. Mass. Electric does not currently have any low-income customers on the default service rate, but if this should change in the future, Mass. Electric would not separately identify low income customers from the general list of residential customers when giving out default service customer lists to requesting suppliers.

residential and small business customers and individual interviews with large business customers indicate that customers believe that all of their information, except for their names and addresses, is proprietary, and do not want it released without their specific authorization. In effect, they constitute “market information acquired or developed by the distribution company in the course of responding to requests for distribution service or any proprietary customer information” sited in M.G.L. c. 164, §1C. This statute bars a distribution company from sharing this information with an affiliate, including an unregulated marketing affiliate, without the customer’s prior written authorization. The Department’s standards of conduct track this requirement. 220 CMR 12.03(9). In addition, the Department’s standards of conduct require the distribution company to “process all same or similar requests for any product, service, or information in the same manner and within the same period of time.” 220 CMR 12.03(7). What a distribution company cannot do for its affiliate, it cannot do for unaffiliated companies.

For proprietary information, an opt-out procedure is not sufficient. Many customers would have their proprietary information released without having given effective meaningful consent to the utility, either for the release of the information at all, or for the release to a specific power marketer. Mass. Electric recommends that the release of billing and load data information be handled the way customer switches are handled now. Suppliers with written authorization from customers could get this information as an Electronic Business Transaction without any further manual process. This process would be logistically simple and easy to implement.

Department’s authority to penalize marketers for violations

The Department has the statutory authority to penalize marketers for violations of its orders in

this docket and contracts with the distribution companies for the implementation of the directives contained in these orders. The Department would have to change its regulations to implement these penalties.

M.G.L. c. 164, §1F(3) authorizes and directs the Department to establish rules and regulations to promote effective competition, investigate disputes, and impose fines or penalties. The Department's current standards of conduct, 220 CMR 12.00 et seq., do not provide for penalties, however, and the Department would have to revise its regulations to implement them.

Miscellaneous

Mass. Electric would not object to the Department's broadening this requirement to include standard offer customers, although Mass. Electric suggests waiting to see the results of the default service distribution first. In addition, Mass. Electric cautions the Department to take note that this effort is likely to be more successful and positively received in the service territories of those utilities which have a market based standard offer rate. Customers taking service under low standard offer rates would not be eligible to return to those rates once they left to go to competitive supply.

At present, Mass. Electric has been providing name and address information to suppliers upon request on the same or next day as we receive the request. We have not received any complaints about our turn-around time, and suggest that any party aggrieved by this turn-around time contact us. The answer to how frequently information should be updated depends on the ultimate decision concerning the information to be released. Load and interval data are more difficult and time consuming to assemble than name and address information, for example. We are currently updating the name and

address lists monthly and providing them by diskette to qualifying, requesting suppliers and brokers.

At present, we do not collect the costs involved with the distribution of information, except pursuant to our load interval data tariff approved by the Department in D.T.E. 01-28 (Phase I). The actual costs of providing information depend on what information is being provided. In general, we recommend that in the long run the suppliers bear the costs of providing the information, as it is information that they will use in their marketing efforts.

Mass. Electric believes that services appurtenant to the supply of electricity, such as demand side management services, are included in the term energy-related services. Mass. Electric recommends that the Department set forth the definition in more detail in order to clarify it for the parties and inform the contracts between the distribution companies and suppliers.

ELECTRONIC SIGNATURES

The Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq. (“E-Sign”), enacted June 30, 2000, generally allows electronic signatures and contracts. (One exception is the cancellation or termination of utility services, including water, heat, and power. 15 U.S.C. § 7003 (b)(2)(A).) It applies to any transaction in or affecting interstate or foreign commerce. 15 U.S.C. § 7001 (a). While the relationship between a Massachusetts distribution company and many, but not all, customers is intrastate, competitive suppliers and brokers signing customers up over the internet and using electronic commerce in their transactions with the distribution companies may well be interstate.

The Restructuring Act, enacted in 1997, requires suppliers to obtain the “affirmative choice” of

a customer prior to providing power or other services to the customer. M.G.L. c. 164, § 1F(8)(a)(i).

“Affirmative choice” is defined as “the signing of a letter of authorization, third party verification, or the completion of a toll-free call made by the customer to an independent third party. . .” M.G.L. c. 164, § 1F(8)(a)(ii).

To the extent that E-Sign does not pre-empt the Restructuring Act, an electronic signature would not be sufficient for customers signing up with suppliers. Otherwise, electronic signatures may be used. If the Department promulgates regulations governing new processes for releasing information, the regulations could include the use of electronic signatures.

Respectfully submitted,
MASSACHUSETTS ELECTRIC
COMPANY AND NANTUCKET
ELECTRIC COMPANY

By their attorney,

Amy Rabinowitz
25 Research Drive
Westboro, MA 01582

August 10, 2001